PUBLIC PROSECUTOR v. LEE TUAH SUAH.

[Criminal Revision (Taylor, J.) December 4, 1947]

Opium and Chandu Proclamation (No. 49) S. 9 (1) — Accused charged with being owner of vessel used for exportation of opium — Meaning of 'export' — Transfer of Powers and Interpretation Ordinance S. 15.

In this case the appellant had been convicted of being the owner of a vessel used for the exportation of opium, an offence punishable under S. 9 (1) of the Opium and Chandu Proclamation. The facts were that the vessel proceeded down the Malacca river bound for a foreign port and on being stopped at the Customs examination station at the mouth of the river was found to have on board a quantity of opium concealed under sacks. The owner was not on board the vessel.

Held, (1) that the definition of the word "export" in the Transfer of Powers and Interpretation Ordinance S. 15 as meaning "to take or cause to be taken out of the Malay Peninsula by land, sea or air" is narrower than the ordinary meaning of the word so that in this case the process of exportation had not commenced when the vessel moved down the river towards the open sea; (2) that consequently an attempted exportation only had taken place and as the Opium and Chandu Proclamation does not provide that an owner shall be deemed to have committed an offence if the vessel is used by someone else for such an attempt, the conviction of the owner in this case must be quashed.

CRIMINAL REVISION.

Atkinson for the Appellant.

Kilner (Crown Counsel) for the Respondent.

Taylor, J. : — This is an Appeal, by way of case stated, from a determination by the learned District Judge at Malacca who convicted the Appellant of being the owner of a vessel used for the exportation of opium, an offence punishable under Section 9, sub-section 1 of the Opium Proclamation 1946 (No. 49).

The facts were that the vessel proceeded down the Malacca river bound for a foreign port and being stopped at the Customs examination station at the mouth of the river was found to have on board a quantity of opium concealed under sacks.

The owner was not on board but was unable to prove that he was not concerned with the opium and he was therefore rightly convicted, the onus of proof being shifted on to him by the express words of the section, if what was done amounted to exportation.

The principal contention for the Appellant was that Section 9 of the Proclamation under which he was charged only makes the owner of the vessel liable where the vessel has been used for the actual exportation of opium, meaning a completed act of exportation, and although an attempt to export is an offence the Proclamation does not provide that the owner shall be deemed to have committed an offence if the vessel is used by somone else for such an attempt.

It was also argued, and I think rightly, that since Section 9 imposes a criminal liability on a person who may have no actual knowledge of the offence for which he is to be punished, the Section is one which, on principle, should be construed strictly in favour of such a person.

Counsel for the Appellant also referred to the Transfer of Powers and Interpretation Ordinance, Section 15 of which provides that the word "export" with its grammatical variations and cognate expressions shall mean "to take or cause to be taken out of the Malay Peninsula by land, sea or air". The attention of the trial judge does not appear to have been drawn to this definition. He held that the process of exportation had commenced when the vessel moved down the river towards the open sea and that the vessel had therefore been used for the exportation of opium within the meaning of the section.

Counsel for the Public Prosecutor argued that if a ship had cleared and was going down the river, those in charge clearly intending to leave the territorial waters, the offence of using the ship for exportation would have been completed. He submitted that if a ship must actually cross the territorial limit before exportation could be said to be complete, that would involve anomalous, if not ridiculous, results.

As a matter of ordinary English usage I am inclined to think that "exportation" would be held to mean the act of carrying out of the country and that at any rate once the ship had cleared and it was no longer possible for the shipper of goods in the ship to stop them, the shipper would be said to have exported the goods but in my view the Statuory definition of export and exportation which applies to this Proclamation is narrower than the ordinary meaning of the words. For this reason I think that the appeal must be allowed and the conviction quashed.

Appeal Allowed.

TAN YEE MOH v. VARTHAMAL.

[App. Civil Juris. (Evans, J.) December 10, 1947]

Rent and Charged Land (Restriction) Enactment — Action for ejectment — Allegation that rent was in arrears for more than fourteen days — Place where rent is due and payable.

This was an appeal from an order of ejectment made by the District Judge. At the trial it was alleged by the plaintiffs the landlord of the premises that the rent had been in arrears for more than fourteen days. The defendant who was the tenant denied that rent was lawfully in arrears, alleging that no demand had been made at the premises leased, and that he was unaware of the plaintiff's address.

Held, (1) that the general rule that the debtor must seek out his creditor does not apply in the case of rent which is in general due on the land demised; (2) that on the facts the plaintiff had failed to prove that the rent was in arrears, so as to take the case out of the Rent and Charged Land (Restriction) Enactment.

Cases referred to :—

(1) *Rowe v. Young,* 2 Brod. & B. 234.

(2) *Crouch v. Pastolfe,* S. T. Raym. 418.

(3) *Haldane v. Johnson* 8 Ex. 689.

APPEAL FROM DISTRICT JUDGE.

Lim Cheng Ean for the Appellant.

S. M. Sharma for the Respondent.

Evans, J. : — In this case the appellant is the tenant of premises known as 297, Kota Road, Taiping, and was sued before the District Judge for an order of ejectment with an allegation, made for the purpose of taking the case outside the Rent and Charged Land (Restriction) Enactment, that the rent was in arrears for more than 14 days. The defendant denied that rent was lawfully in arrears, alleging that no demand had been made at the premises leased, and that he was unaware of the plaintiff's address. The plaintiff had recently purchased the premises and had, since then, been anxious to obtain possession. Allegations of fraud or sharp practice are made on both sides.

Before me, the counsel for the appellant relied mainly upon an argument that the rent was not lawfully due and unpaid. He also relied upon a tender of the rent due after the receipt of the notice to quit. I do not think it is necessary to go into that point.

The learned District Judge, having found that the rent was due in advance, went on: "The Defendant has tried to show that the actual delay in paying his June rent was due to the Plaintiff, since, he (Defendant) was unable to send the rent by post for want of an address. I find no substance in Defendant's contention as the following facts show. He received Ex. P. 1 (a request to give up possession dated the 19th May before any rent was in arrears) on the 21st May. At the top there appears the name and address of Plaintiff's solicitor". It is clear, therefore, that the learned District Judge decided the case on the assumption that it was the duty of the tenant to seek out his landlord and to tender her the rent, although it had admittedly been the practice of the landlord to collect rent through her brother-in-law. It is true that the general rule is that the debtor must seek out his creditor but this does not apply in the case of rent which is due on the land demised and is very commonly collected on the spot. In the words of Mr. Justice Bayley in *Rowe v. Young*[1]:

"Rent is reserved in some case generally, and then the proper place for the payment, the place appointed by law, is the land out of which it issues. In some cases it is expressly made payable at some other place: and yet, in either (?) case, is there a precedent, either in debt on the reddendum, or in covenant, of an averment, that the Plaintiff was at the time and place to demand it. The declaration, in such cases, is always general, that on such a day so much of the said rent became due and in arrear, and that Defendant, although often requested, had not paid ..... Now, what can be the principle of all these cases? What but this, that the money to be paid is a debt from the Defendant; that it is due generally and universally; that it will continue due, though there be a neglect on the part of the creditor to attend at the time and place to receive; that it is a matter of defence on the part of the Defendant to shew that he was in attendance to pay, but that the Plaintiff was not in readiness to receive; and that defence will generally speaking, be in bar of damages only, not in bar of the debt, and must be accompanied with a bringing of the debt into court". In *Crouch v. Pastolfe*[2] which was a claim in debt for rent, a plea of being in attendance and ready to pay was held good although there was no actual tender of the rent.

In England there is generally a covenant, or an implied covenant, to pay, and where action is brought upon the covenant, the position is as the learned District Judge assumed. [See *Haldane v. Johnson*[3]].

In this case, there is no question of any covenant to pay. The defendant was apparently living on the premises, and although the pleading is, as is too often the case in this country, vague and evasive, it seems to me that, looking at the facts of the case, it was raised by the defendant, and he was present and willing to pay on the premises when the rent was due. In fact, the rent for June has been accepted without prejudice. It appears to me, therefore, that the plaintiff has failed to prove that the rent was in arrears, so as to take this case out of the Rent and Charged Land (Restriction) Enactment. It is clear on all the evidence that she has been wanting these premises for her own occupation, and she should make application on those grounds to the Rent Board.

The appeal is allowed and the judgment of the District Court reversed.

Appeal Allowed.

OSMAN KHAN v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Russell, J.) December 13, 1947]

Summary trial — Onus of proof — Evidence of accomplice — Use of Statements made in course of Police investigation to impeach evidence of a witness.

In this cases the learned District Judge convicted the accused and in his grounds of judgment said in effect (1) that there were two conflicting stories and that he had to decide which one to believe (2) that he had considered the evidence of the accused, the complainant and their witnesses (3) that he did not accept the story of the accused and his witnesses and (4) that he believed the evidence of the complainant and his witnesses who corroborated his story in material particulars.